

Before the Federal Communications Commission Washington, D.C. 20554

FCC MAIL SECTION

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MM Docket No. 94-15

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b) RM-8411 Table of Allotments, FM Broadcast Stations. (Ravenswood and Elizabeth, West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 2, 1994; Released: March 2, 1994

Comment Date: April 25, 1994 Reply Comment Date: May 10, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by MediaCom, Inc. ("petitioner"), licensee of Station WRZZ(FM), Channel 291A, Ravenswood, West Virginia, proposing the reallocation of Channel 291A from Ravenswood to Elizabeth, West Virginia, and the modification of Station WRZZ(FM)'s license to specify Elizabeth, West Virginia, as its community of license. Petitioner states its intention to apply for Channel 291A at Elizabeth, if allotted.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocation to Elizabeth is mutually exclusive with the existing allotment of Channel 291A at Ravenswood, West Virginia. Petitioner also states that the change of community is necessary because from its present tower location it is unable to properly serve Ravenswood within its 70 dBu contour. Petitioner claims that this is due to multi-path signal distortions caused by winding river valley and hills along the sides of the river which adversely affect the city grade signal. Petitioner maintains that the city grade signal cannot be improved by relocating the transmitter site because it would cause an encroachment on the protective contours of Station WAEZ(FM), Channel 292A, Milton, West Virginia. Moreover, petitioner claims that the reallocation of Channel 291A from Ravenswood (population 4,189)¹ to Elizabeth (population 900) would

provide Elizabeth with its first local aural transmission service and would not deprive Ravenswood of its sole local aural transmission service.²

3. We believe the public interest would be served by proposing the reallocation of Channel 291A from Ravenswood to Elizabeth, West Virginia, since it could provide the community with its first local aural transmission service and would eliminate Station WRZZ(FM)'s terrain shielding problem. An engineering analysis has determined that Channel 291A can be allotted to Elizabeth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.³ Since Elizabeth is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Ravenswood, West Virginia	226A, 291A	226A
Elizabeth, West Virginia	--	291A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 25, 1994, and reply comments on or before May 10, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert L. Olender, Esq. Baraff, Koerner, Olender & Hochberg, P.C. 5335 Wisconsin Ave., N.W., Suite 300 Washington, D.C. 20015-2003 (Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

¹ Population figures taken from the 1990 U.S. Census. ² Ravenswood is served by Station WMOV(AM). In addition, a construction permit has been issued for Station WFYZ(FM),

Channel 226A at Ravenswood. ³ The coordinates for Channel 291A at Elizabeth are North Latitude 39-03-48 and West Longitude 81-23-43.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cui-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.